

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE NO. 2 FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 2
92ND GENERAL ASSEMBLY

Offered April 2, 2003.

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TERRY L. SPIELER, Secretary.

0211S.11P

AN ACT

To repeal sections 285.300, 288.036, 288.038, 288.040, 288.050, 288.060, 288.110, 288.128, 288.270, 288.310, and 288.330, RSMo, and to enact in lieu thereof thirteen new sections relating to employees, with an emergency clause and penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 285.300, 288.036, 288.038, 288.040, 288.050, 288.060, 288.110, 288.128, 288.270, 288.310, and 288.330, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 285.300, 288.036, 288.038, 288.040, 288.050, 288.060, 288.110, 288.128, 288.270, 288.310, 288.330, 288.385, and 288.395, to read as follows:

285.300. 1. Every employer doing business in the state shall require each newly hired employee to fill out a federal W-4 withholding form. A copy of each withholding form or an equivalent form containing data required by section 285.304 which may be provided in an electronic or magnetic format, shall be sent to the department of revenue by the employer within twenty days after the date the employer hires the employee or in the case of an employer transmitting a report magnetically or electronically, by two monthly transmissions, if necessary, not less than twelve days nor more than sixteen days apart. For purposes of this section, the date the employer hires the employee shall be the earlier of the date the employee signs the W-4 form or its equivalent, or the first date the employee reports to work, or performs labor or

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

services. Such forms shall be forwarded by the department of revenue to the division of child support enforcement on a weekly basis and the information shall be entered into the database, to be known as the "State Directory of New Hires". The information reported shall be provided to the National Directory of New Hires established in 42 U.S.C. section 653, other state agencies or contractors of the division as required or allowed by federal statutes or regulations. **The division of employment security shall cross-check Missouri unemployment compensation recipients against any federal new hire database or any other database containing Missouri or other states wage information which is maintained by the federal government on a monthly basis.**

2. Any employer that has employees who are employed in two or more states and transmits reports magnetically or electronically may comply with subsection 1 of this section by:

(1) Designating one of the states in which the employer has employees as the designated state that such employer shall transmit the reports; and

(2) Notifying the secretary of Health and Human Services of such designation.

288.036. 1. "Wages" means all remuneration, payable or paid, for personal services including commissions and bonuses and, except as provided in subdivision [(8)] (7) of this section, the cash value of all remuneration paid in any medium other than cash. Gratuities, including tips received from persons other than the employing unit, shall be considered wages only if required to be reported as wages pursuant to the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3306, and shall be, for the purposes of this chapter, treated as having been paid by the employing unit. Severance pay shall be considered as wages [to the extent required pursuant to the Federal Unemployment Tax Act, 26 U.S.C. Section 3306(b)]. Vacation pay and holiday pay shall be considered as wages for the week with respect to which it is payable. The term "wages" shall not include:

(1) [For the purposes of determining the amount of contributions due and contribution rates, that part of the remuneration for employment paid to an individual by an employer or the employer's predecessors which is in excess of seven thousand dollars for the calendar years 1988 through 1992, seven thousand five hundred dollars for the calendar year 1993, eight thousand five hundred dollars for the calendar years 1994, 1995 and 1996, eight thousand dollars for calendar year 1997, and eight thousand five hundred dollars for the calendar year 1998, and the state taxable wage base as determined in subsection 2 of this section for calendar year 1999, and each calendar year thereafter, unless that part of the remuneration is subject to a tax pursuant to a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund; except that:

(a) In addition to the taxable wage, as defined in this subdivision, if on December 31, 1995, or on any December thirty-first thereafter, the balance in the unemployment insurance trust fund, less any federal advances, is less than one hundred million dollars, then the amount

of the taxable wage then in effect shall be increased by five hundred dollars for all succeeding calendar years;

(b) If on December 31, 1995, or any December thirty-first thereafter, the balance in the unemployment insurance trust fund, less any federal advances, is two hundred and fifty million dollars or more, then the amount of the taxable wage then in effect shall be reduced by five hundred dollars, but not below that part of the remuneration which is subject to a tax pursuant to a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund;

(2)] The amount of any payment made (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment) to, or on behalf of, an individual under a plan or system established by an employing unit which makes provision generally for individuals performing services for it or for a class or classes of such individuals, on account of:

(a) Sickness or accident disability, but in case of payments made to an employee or any of the employee's dependents this paragraph shall exclude the term "wages" only payments which are received pursuant to a workers' compensation law; or

(b) Medical and hospitalization expenses in connection with sickness or accident disability; or

(c) Death;

[(3)] (2) The amount of any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employing unit to, or on behalf of, an individual performing services for it after the expiration of six calendar months following the last calendar month in which the individual performed services for such employing unit;

[(4)] (3) The amount of any payment made by an employing unit to, or on behalf of, an individual performing services for it or his or her beneficiary:

(a) From or to a trust described in 26 U.S.C. 401(a) which is exempt from tax pursuant to 26 U.S.C. 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such an employee and not as a beneficiary of the trust; or

(b) Under or to an annuity plan which, at the time of such payments, meets the requirements of section 404(a)(2) of the Federal Internal Revenue Code (26 U.S.C.A. Sec. 404);

[(5)] (4) The amount of any payment made by an employing unit (without deduction from the remuneration of the individual in employment) of the tax imposed pursuant to section 3101 of the Federal Internal Revenue Code (26 U.S.C.A. Sec. 3101) upon an individual with respect to remuneration paid to an employee for domestic service in a private home or for agricultural labor;

[(6)] (5) Remuneration paid in any medium other than cash to an individual for services not in the course of the employing unit's trade or business;

[(7)] (6) Remuneration paid in the form of meals provided to an individual in the service of an employing unit where such remuneration is furnished on the employer's premises and at the employer's convenience, except that remuneration in the form of meals that is considered wages and required to be reported as wages pursuant to the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3306 shall be reported as wages as required thereunder;

[(8)] (7) For the purpose of determining wages paid for agricultural labor as defined in paragraph (b) of subdivision (1) of subsection 12 of section 288.034 and for domestic service as defined in subsection 13 of section 288.034, only cash wages paid shall be considered;

[(9)] (8) Beginning on October 1, 1996, any payment to, or on behalf of, an employee or the employee's beneficiary under a cafeteria plan, if such payment would not be treated as wages pursuant to the Federal Unemployment Tax Act.

2. The increases or decreases to the state taxable wage base for calendar year [1999] **2003**, and each calendar year thereafter, shall be determined by the provisions within this subsection. **Upon the effective date of this section**, the state taxable wage base for calendar year [1999, and] **2003 shall be eight thousand dollars for the balance of the calendar year. The state taxable wage base for each calendar year thereafter[,] shall be determined** by the preceding September thirtieth balance of the unemployment compensation trust fund, less any outstanding federal Title XII advances received pursuant to section 288.330 **and the principal, interest, and administrative expenses related to bonds issued pursuant to section 288.330**. When the September thirtieth unemployment compensation trust fund balance, less any outstanding federal Title XII advances received pursuant to section 288.330, is:

(1) Less than, or equal to, three hundred **fifty** million dollars, then the wage base shall increase by [five hundred] **one thousand** dollars; or

(2) [Four] **Five** hundred [fifty] million or more, then the state taxable wage base for the subsequent calendar year shall be decreased by five hundred dollars. In no event, however, shall the state taxable wage base increase beyond ten thousand five hundred dollars, or decrease to less than seven thousand dollars.

For any calendar year, the state taxable wage base shall not be reduced to less than that part of the remuneration which is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation trust fund. **Nothing in this section shall be construed to prevent the wage base from increasing or decreasing by increments of five hundred dollars.**

288.038. 1. With respect to initial claims filed [during calendar years 1998, 1999, 2000 and 2001] **after the effective date of this section** and each calendar year thereafter, the

"maximum weekly benefit amount" means four percent of the total wages paid to an eligible insured worker during that quarter of the worker's base period in which the worker's wages were the highest, but the maximum weekly benefit amount shall not exceed [two hundred five dollars in the calendar year 1998, two hundred twenty dollars in the calendar year 1999, two hundred thirty-five dollars in the calendar year 2000, and] two hundred fifty dollars in the calendar year [2001] **2003**, and each calendar year thereafter. If such benefit amount is not a multiple of one dollar, such amount shall be reduced to the nearest lower full dollar amount.

2. Should the unemployment trust fund established pursuant to section 288.290 become insolvent the maximum weekly benefit amount shall not be increased until twenty-four months following such time that the fund is again solvent.

288.040. 1. A claimant who is unemployed and has been determined to be an insured worker shall be eligible for benefits for any week only if the deputy finds that:

(1) The claimant has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the division may prescribe;

(2) The claimant is able to work and is available for work. No person shall be deemed available for work unless such person has been and is actively and earnestly seeking work. Upon the filing of an initial or renewed claim, and prior to the filing of each weekly claim thereafter, the deputy shall notify each claimant of the number of work search contacts required to constitute an active search for work. No person shall be considered not available for work, pursuant to this subdivision, solely because he or she is a substitute teacher or is on jury duty. A claimant shall not be determined to be ineligible pursuant to this subdivision because of not actively and earnestly seeking work if:

(a) The claimant is participating in training approved pursuant to Section 236 of the Trade Act of 1974, as amended, (19 U.S.C.A. Sec. 2296, as amended); or

(b) The claimant is temporarily unemployed through no fault of his or her own and has a definite recall date within eight weeks of his or her first day of unemployment; however, upon application of the employer responsible for the claimant's unemployment, such eight-week period may be extended at the discretion of the director; or

(c) The claimant is participating in a state approved drug or alcohol treatment program;

(3) The claimant has reported in person to an office of the division as directed by the deputy, but at least once every four weeks, except that a claimant shall be exempted from the reporting requirement of this subdivision if:

(a) The claimant is claiming benefits in accordance with division regulations dealing with partial or temporary total unemployment; or

(b) The claimant is temporarily unemployed through no fault of his or her own and has a definite recall date within eight weeks of his or her first day of unemployment; or

(c) The claimant resides in a county with an unemployment rate, as published by the division, of ten percent or more and in which the county seat is more than forty miles from the nearest division office;

(d) The director of the division of employment security has determined that the claimant belongs to a group or class of workers whose opportunities for reemployment will not be enhanced by reporting in person, or is prevented from reporting due to emergency conditions that limit access by the general public to an office that serves the area where the claimant resides, but only during the time such circumstances exist.

Ineligibility pursuant to this subdivision shall begin on the first day of the week which the claimant was scheduled to claim and shall end on the last day of the week preceding the week during which the claimant does report in person to the division's office;

(4) Prior to the first week of a period of total or partial unemployment for which the claimant claims benefits he **or she** has been totally or partially unemployed for a waiting period of one week. No more than one waiting week will be required in any benefit year. [The one-week waiting period shall become compensable after unemployment during which benefits are payable for nine consecutive weeks.] No week shall be counted as a week of total or partial unemployment for the purposes of this subsection unless it occurs within the benefit year which includes the week with respect to which the claimant claims benefits;

(5) The claimant has made a claim for benefits;

(6) The claimant is participating in reemployment services, such as job search assistance services, as directed by the deputy if the claimant has been determined to be likely to exhaust regular benefits and to need reemployment services pursuant to a profiling system established by the division, unless the deputy determines that:

(a) The individual has completed such reemployment services; or

(b) There is justifiable cause for the claimant's failure to participate in such reemployment services.

2. A claimant shall be ineligible for waiting week credit or benefits for any week for which the deputy finds he or she is or has been suspended by his or her most recent employer for misconduct connected with his or her work. **For purposes of this chapter:**

(1) The term "misconduct" shall mean an act of wanton or willful disregard of the employer's interest, a deliberate violation of the employer's rules, a disregard of standards of behavior which the employer has the right to expect of his or her employee, or negligence in such degree or recurrence as to manifest culpability, wrongful intent or evil design, or show an intentional and substantial disregard of the employer's interest, or of the employee's duties and obligations to the employer;

(2) Suspensions of four weeks or more shall be treated as a discharge.

3. (1) Benefits based on "service in employment", defined in subsections 7 and 8 of

section 288.034, shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this law; except that:

(a) With respect to service performed in an instructional, research, or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week of unemployment commencing during the period between two successive academic years or terms, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years (or terms) and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

(b) With respect to services performed in any capacity (other than instructional, research, or principal administrative capacity) for an educational institution, benefits shall not be paid on the basis of such services to any individual for any week which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a contract or a reasonable assurance that such individual will perform such services in the second of such academic years or terms;

(c) With respect to services described in paragraphs (a) and (b) of this subdivision, benefits shall not be paid on the basis of such services to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performed such services in the period immediately before such vacation period or holiday recess, and there is reasonable assurance that such individual will perform such services immediately following such vacation period or holiday recess;

(d) With respect to services described in paragraphs (a) and (b) of this subdivision, benefits payable on the basis of services in any such capacity shall be denied as specified in paragraphs (a), (b), and (c) of this subdivision, to any individual who performed such services at an educational institution while in the employ of an educational service agency, and for this purpose the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

(2) If compensation is denied for any week pursuant to paragraph (b) or (d) of subdivision (1) of this subsection, to any individual performing services at an educational institution in any capacity (other than instructional, research or principal administrative capacity), and such individual was not offered an opportunity to perform such services for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of paragraph (b) or (d) of subdivision (1) of this subsection.

4. (1) A claimant shall be ineligible for waiting week credit, benefits or shared work benefits for any week for which he or she is receiving or has received remuneration exceeding his or her weekly benefit amount or shared work benefit amount in the form of:

(a) Compensation for temporary partial disability pursuant to the workers' compensation law of any state or pursuant to a similar law of the United States;

(b) A governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment which is based on the previous work of such claimant to the extent that such payment is provided from funds provided by a base period or chargeable employer pursuant to a plan maintained or contributed to by such employer; but, except for such payments made pursuant to the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding provisions of prior law), the provisions of this paragraph shall not apply if the services performed for such employer by the claimant after the beginning of the base period (or remuneration for such services) do not affect eligibility for or increase the amount of such pension, retirement or retired pay, annuity or similar payment.

(2) If the remuneration referred to in this subsection is less than the benefits which would otherwise be due, the claimant shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration, and, if such benefit is not a multiple of one dollar, such amount shall be lowered to the next multiple of one dollar.

(3) Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, if a claimant has contributed in any way to the Social Security Act or the Railroad Retirement Act of 1974, or the corresponding provisions of prior law, no part of the payments received pursuant to such federal law shall be deductible from the amount of benefits received pursuant to this chapter.

5. A claimant shall be ineligible for waiting week credit or benefits for any week for which or a part of which he or she has received or is seeking unemployment benefits pursuant to an unemployment insurance law of another state or the United States; provided, that if it be finally determined that the claimant is not entitled to such unemployment benefits, such ineligibility shall not apply.

6. (1) A claimant shall be ineligible for waiting week credit or benefits for any week for which the deputy finds that such claimant's total or partial unemployment is due to a stoppage of work which exists because of a labor dispute in the factory, establishment or other premises in which such claimant is or was last employed. In the event the claimant secures other employment from which he or she is separated during the existence of the labor dispute, the claimant must have obtained bona fide employment as a permanent employee for at least the major part of each of two weeks in such subsequent employment to terminate his or her ineligibility. If, in any case, separate branches of work which are commonly conducted as separate businesses at separate premises are conducted in separate departments of the same

premises, each such department shall for the purposes of this subsection be deemed to be a separate factory, establishment or other premises. This subsection shall not apply if it is shown to the satisfaction of the deputy that:

(a) The claimant is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(b) The claimant does not belong to a grade or class of workers of which, immediately preceding the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.

(2) "Stoppage of work" as used in this subsection means a substantial diminution of the activities, production or services at the establishment, plant, factory or premises of the employing unit. This definition shall not apply to a strike where the employees in the bargaining unit who initiated the strike are participating in the strike. Such employees shall not be eligible for waiting week credit or benefits during the period when the strike is in effect, regardless of diminution, unless the employer has been found guilty of an unfair labor practice by the National Labor Relations Board or a federal court of law for an act or actions preceding or during the strike.

7. On or after January 1, 1978, benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

8. Benefits shall not be payable on the basis of services performed by an alien, unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of Section 212(d)(5) of the Immigration and Nationality Act).

(1) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(2) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of such individual's alien status shall be made except upon a preponderance of the evidence.

288.050. 1. Notwithstanding the other provisions of this law, a claimant shall be disqualified for waiting week credit or benefits until after the claimant has earned wages for

work insured pursuant to the unemployment compensation laws of any state equal to ten times the claimant's weekly benefit amount if the deputy finds:

(1) That the claimant has left work voluntarily without good cause attributable to such work or to the claimant's employer; except that the claimant shall not be disqualified:

(a) If the deputy finds the claimant quit such work for the purpose of accepting a more remunerative job which the claimant did accept and earn some wages therein;

(b) If the claimant quit temporary work to return to such claimant's regular employer;
or

(c) If the deputy finds the individual quit work, which would have been determined not suitable in accordance with paragraphs (a) and (b) of subdivision (3) of this subsection, within twenty-eight calendar days of the first day worked; or

(d) As to initial claims filed after December 31, 1988, if the claimant presents evidence supported by competent medical proof that she was forced to leave her work because of pregnancy, notified her employer of such necessity as soon as practical under the circumstances, and returned to that employer and offered her services to that employer as soon as she was physically able to return to work, as certified by a licensed and practicing physician, but in no event later than ninety days after the termination of the pregnancy. An employee shall have been employed for at least one year with the same employer before she may be provided benefits pursuant to the provisions of this paragraph;

(2) That the claimant has retired pursuant to the terms of a labor agreement between the claimant's employer and a union duly elected by the employees as their official representative or in accordance with an established policy of the claimant's employer; or

(3) That the claimant failed without good cause either to apply for available suitable work when so directed by the deputy, or to accept suitable work when offered the claimant, either through the division or directly by an employer by whom the individual was formerly employed, or to return to the individual's customary self-employment, if any, when so directed by the deputy. **An offer of suitable work shall be conclusively established if an employer notifies the claimant in writing of such offer by sending an acknowledgment via any form of certified mail issued by the United States Postal Service stating such offer to the claimant at his or her last known address. Nothing in this subdivision shall be construed to limit the means by which the deputy may establish that the claimant has been sufficiently notified of available suitable work.**

(a) In determining whether or not any work is suitable for an individual, the division shall consider, among other factors and in addition to those enumerated in paragraph (b) of this subdivision, the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness and prior training, the individual's experience and prior earnings, the individual's length of unemployment, the individual's prospects for securing work in the

individual's customary occupation, the distance of available work from the individual's residence and the individual's prospect of obtaining local work; except that, if an individual has moved from the locality in which the individual actually resided when such individual was last employed to a place where there is less probability of the individual's employment at such individual's usual type of work and which is more distant from or otherwise less accessible to the community in which the individual was last employed, work offered by the individual's most recent employer if similar to that which such individual performed in such individual's last employment and at wages, hours, and working conditions which are substantially similar to those prevailing for similar work in such community, or any work which the individual is capable of performing at the wages prevailing for such work in the locality to which the individual has moved, if not hazardous to such individual's health, safety or morals, shall be deemed suitable for the individual;

(b) Notwithstanding any other provisions of this law, no work shall be deemed suitable and benefits shall not be denied pursuant to this law to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- a. If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- b. If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- c. If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

2. (1) Notwithstanding the other provisions of this law, if a deputy finds that a claimant has been discharged for misconduct connected with the claimant's work, such claimant[, depending upon the seriousness of the misconduct as determined by the deputy according to the circumstances in each case,] shall be disqualified for waiting week credit or benefits [for not less than four nor more than sixteen weeks for which the claimant claims benefits and is otherwise eligible]. In addition to the disqualification for benefits pursuant to this provision the division may in the more aggravated cases of misconduct, cancel all or any part of the individual's wage credits, which were established through the individual's employment by the employer who discharged such individual, according to the seriousness of the misconduct. A disqualification provided for pursuant to this subsection shall not apply to any week which occurs after the claimant has earned wages for work insured pursuant to the unemployment compensation laws of any state in an amount equal to eight times the claimant's weekly benefit amount. **Should a claimant be disqualified on more than one occasion within the base period, the claimant shall be required to earn wages in an amount equal to or in excess of eight times the maximum weekly benefit amount for each disqualification, such additionally required wages shall run consecutively.**

(2) For the purposes of this section:

(a) The "misconduct" shall mean an act of wanton or willful disregard of the employer's interest, a deliberate violation of the employer's rules, a disregard of standards of behavior which the employer has the right to expect of his or her employee, or negligence in such degree or recurrence as to manifest culpability, wrongful intent or evil design or show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to the employer.

3. A pattern of absenteeism or tardiness may constitute misconduct regardless of whether the last incident alone which results in the discharge constitutes misconduct.

4. Notwithstanding the provisions of subsection 1 of this section, a claimant may not be determined to be disqualified for benefits because the claimant is in training approved pursuant to section 236 of the Trade Act of 1974, as amended, (19 U.S.C.A. Sec. 2296, as amended), or because the claimant left work which was not "suitable employment" to enter such training. For the purposes of this subsection "suitable employment" means, with respect to a worker, work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than eighty percent of the worker's average weekly wage as determined for the purposes of the Trade Act of 1974.

288.060. 1. All benefits shall be paid through employment offices in accordance with such regulations as the division may prescribe.

2. Each eligible insured worker who is totally unemployed in any week shall be paid for such week a sum equal to his weekly benefit amount.

3. Each eligible insured worker who is partially unemployed in any week shall be paid for such week a partial benefit. Such partial benefit shall be an amount equal to the difference between his weekly benefit amount and that part of his wages for such week in excess of twenty dollars, and, if such partial benefit amount is not a multiple of one dollar, such amount shall be reduced to the nearest lower full dollar amount. [Termination pay, severance pay or] Pay received by an eligible insured worker who is a member of the organized militia for training or duty authorized by section 502(a)(1) of Title 32, United States Code[, or who is an elected official] shall not be considered wages for the purpose of this subsection.

4. The division shall compute the wage credits for each individual by crediting him with the wages paid to him for insured work during each quarter of his base period or twenty-six times his weekly benefit amount, whichever is the lesser. In addition, if a claimant receives wages in the form of termination pay or severance pay and such payment appears in a base period established by the filing of an initial claim, the claimant may, at his option, choose to have such payment included in the calendar quarter in which it was paid or choose to have it prorated equally among the quarters comprising the base period of the claim. The maximum total amount of benefits payable to any insured worker during any benefit year shall not exceed twenty-six times his weekly benefit amount, or thirty-three and one-third percent of his wage credits,

whichever is the lesser. For the purpose of this section, wages shall be counted as wage credits for any benefit year, only if such benefit year begins subsequent to the date on which the employing unit by whom such wages were paid has become an employer. The wage credits of an individual earned during the period commencing with the end of a prior base period and ending on the date on which he filed an allowed initial claim shall not be available for benefit purposes in a subsequent benefit year unless, in addition thereto, such individual has subsequently earned either wages for insured work in an amount equal to at least five times his current weekly benefit amount or wages in an amount equal to at least ten times his current weekly benefit amount.

5. In the event that benefits are due a deceased person and no petition has been filed for the probate of the will or for the administration of the estate of such person within thirty days after his death, the division may by regulation provide for the payment of such benefits to such person or persons as the division finds entitled thereto and every such payment shall be a valid payment to the same extent as if made to the legal representatives of the deceased.

6. The division is authorized to cancel any benefit warrant remaining outstanding and unpaid one year after the date of its issuance and there shall be no liability for the payment of any such benefit warrant thereafter.

7. The division may establish an electronic funds transfer system to transfer directly to claimants' accounts in financial institutions benefits payable to them pursuant to this chapter. To receive benefits by electronic funds transfer, a claimant shall satisfactorily complete a direct deposit application form authorizing the division to deposit benefit payments into a designated checking or savings account. Any electronic funds transfer system created pursuant to this subsection shall be administered in accordance with regulations prescribed by the division.

8. The division may issue a benefit warrant covering more than one week of benefits.

288.110. Any individual, type of organization or employing unit which has acquired substantially all of the business of an employer, excepting in any such case any assets retained by such employer incident to the liquidation of his obligations, and in respect to which the division finds that immediately after such change such business of the predecessor employer is continued without interruption solely by the successor, shall stand in the position of such predecessor employer in all respects, including the predecessor's separate account, actual contribution and benefit experience, annual payrolls, and liability for current or delinquent contributions, interest and penalties. If two or more individuals, organizations, or employing units acquired at approximately the same time substantially all of the business of an employer (excepting in any such case any assets retained by such employer incident to the liquidation of his obligations) and in respect to which the division finds that immediately after such change all portions of such business of the predecessor are continued without interruption solely by such successors, each such individual, organization, or employing unit shall stand in the position of

such predecessor with respect to the proportionate share of the predecessor's separate account, actual contribution and benefit experience and annual payroll as determined by the portion of the predecessor's taxable payroll applicable to the portion of the business acquired, and each such individual, organization or employing unit shall be liable for current or delinquent contributions, interest and penalties of the predecessor in the same relative proportion. Further, any successor under this section which was not an employer at the time the acquisition occurred, shall pay contributions for the balance of the current rate year at the same contribution rate as the contribution rate of the predecessor whether such rate is more or less than two and seven-tenths percent, provided there was only one predecessor or there were only predecessors with identical rates. If the predecessors' rates were not identical, the division shall calculate a rate as of the date of acquisition applicable to the successor for the remainder of the rate year, which rate shall be based on the combined experience of all predecessor employers. In the event that any successor was, prior to an acquisition, an employer, and there is a difference in the contribution rate established for such calendar year applicable to any acquired or acquiring employer, the division shall make a recalculation [as of the date of acquisition] of the contribution rate applicable to any successor employer based upon the combined experience of all predecessor and successor employers[, which] **as of the date of the acquisition, unless the date of the acquisition is other than the first day of the calendar quarter. If the date of any such acquisition is other than the first day of the calendar quarter, the division shall make the recalculation of the rate on the first day of the next calendar quarter after the acquisition. When the date of the acquisition is other than the first day of a calendar quarter, the successor employer shall use its rate for the calendar quarter in which the acquisition was made.** The revised contribution rate shall apply to employment after the [date of any such acquisition] **rate recalculation.** For this purpose a calculation date different from July first may be established. When the division has determined that a successor or successors stand in the position of a predecessor employer, the predecessor's liability shall be terminated as of the date of the acquisition.

288.128. 1. In addition to all other contributions due under this chapter, if the fund is utilizing moneys advanced by the federal government under the provisions of 42 U.S.C.A., section 1321 pursuant to section 288.330, **or from the proceeds of bonds issued pursuant to section 288.330,** each employer shall be assessed an amount solely for the payment of interest due on such federal advancements **or, in the case of issuance of bonds, for the payment of the principal, interest, and administrative expenses related to such bonds.** The rate shall be determined by dividing the interest due **on federal advancements, or the principal, interest, and administrative expenses related to bonds,** by ninety-five percent of the total taxable wages paid by all Missouri employers in the preceding calendar year. Each employer's proportionate share shall be the product obtained by multiplying such

employer's total taxable wages for the preceding calendar year by the rate specified in this section. Each employer shall be notified of the amount due under this section by June thirtieth of each year and such amount shall be considered delinquent thirty days thereafter. The moneys collected from each employer for the payment of interest due on federal advances **or principal, interest, and administrative expenses related to bonds** shall be deposited in the special employment security fund.

2. If on December thirty-first of any year the money collected under this section exceeds the amount of interest due on federal advancements by one hundred thousand dollars or more, then each employer's experience rating account shall be credited with an amount which bears the same ratio to the excess moneys collected under this section as that employer's payment collected under this section bears to the total amount collected under this section. Further, if on December thirty-first of any year the moneys collected under this section exceed the amount of interest due on the federal advancements by less than one hundred thousand dollars, the balance shall be transferred from the special employment security fund to the Secretary of the Treasury of the United States to be credited to the account of this state in the unemployment trust fund.

3. Moneys collected pursuant to this section for the payment of principal, interest, and administrative expenses related to bonds issued pursuant to section 288.330 shall only be used for such purpose following appropriation of such moneys by the general assembly. In the event that moneys are collected hereunder for the payment of principal, interest, and administrative expenses related to bonds and the legislature does not make such an appropriation, collections shall be paid into the special employment security fund and be used for such purposes as is allowed by law.

288.270. The provisions of the Wagner-Peyser Act (29 U.S.C.A. Sec. 49 et seq.), as amended, are hereby accepted by this state and the division of employment security is hereby designated and constituted the agency of this state for the purposes of said act. The division shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this chapter and for the purposes of performing such functions as are within the purview of the Wagner-Peyser Act. **Such departments, divisions, and agencies may contract with private entities for the purpose of providing employment and reemployment services.**

288.310. 1. There is hereby created in the state treasury a special fund to be known as the "Special Employment Security Fund". All interest and penalties collected under the provisions of this law, including moneys collected pursuant to section 288.128 for the payment of interest due on federal advances received pursuant to section 288.330 **or the payment of principal, interest, and administrative expenses related to bonds issued pursuant to section 288.330**, shall be paid into this fund. The moneys collected pursuant to section 288.128 shall be used exclusively for the payment of interest due on federal advances received pursuant to section

288.330, or, subject to appropriation by the general assembly, for the payment of principal, interest, and administrative expenses related to bonds issued pursuant to such section. Such moneys, except for moneys collected pursuant to section 288.128, shall not be expended or available for expenditure in any manner which would permit their substitution for, or a corresponding reduction in, federal funds which would in the absence of such money be available to finance expenditures for the administration of the employment security law, but nothing in this section shall prevent such moneys, except for moneys collected pursuant to section 288.128, from being used as a revolving fund, to cover expenditures, necessary and proper under the law, for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when received. Subject to the approval of the director of the department of labor and industrial relations, the moneys in this fund, except for moneys collected pursuant to section 288.128, shall be used by the department of labor and industrial relations for the payment of costs of administration which are found not to have been properly and validly chargeable against federal grants or other funds received for or in the unemployment compensation administration fund. Such moneys, except for moneys collected pursuant to section 288.128, shall be available either to satisfy the obligations incurred by the department of labor and industrial relations for the division directly or by requesting the board of fund commissioners to transfer the required amount from the special employment security fund to the unemployment compensation administration fund. The board of fund commissioners shall upon receipt of a written request of the department of labor and industrial relations make any such transfer. No expenditures of this fund or transfer herein provided, except for moneys collected pursuant to section 288.128, shall be made unless and until the director of the department of labor and industrial relations finds that no other funds are available or can properly be used to finance such expenditures, except that as hereinafter authorized expenditures from such fund may be made for the purpose of acquiring lands and buildings, or for the erection of buildings on lands so acquired, which are deemed necessary by the director of the department of labor and industrial relations for the proper administration of this law. The director of the department of labor and industrial relations shall order the transfer of such funds or the payment of any such obligation and such funds shall be paid by the state treasurer on requisitions drawn by the director of the department of labor and industrial relations directing the state auditor to issue his or her warrant therefor. Any such warrant shall be drawn by the state auditor based upon bills of particulars and vouchers certified by an officer or employee designated by the director of the department of labor and industrial relations. Such certification shall among other things include a duly certified copy of the director of the department of labor and industrial relations' findings hereinbefore referred to. The moneys in this fund, except for moneys collected pursuant to section 288.128, are hereby specifically made available to replace, within a reasonable time, any moneys received by this state pursuant to section 302 of the

Federal Social Security Act (42 U.S.C.A. Sec. 502), as amended, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those necessary for the proper administration of the employment security law. The moneys in this fund shall be continuously available to the director of the department of labor and industrial relations for expenditure in accordance with the provisions of this section and shall not lapse at any time or be transferred to any other fund except as herein provided.

2. The director of the department of labor and industrial relations, subject to the approval of the board of public buildings, is authorized and empowered to use all or any part of the funds in the special employment security fund, except for moneys collected pursuant to section 288.128, for the purpose of acquiring suitable office space for the division by way of purchase, lease, contract or in any other manner, including the right to use such funds or any part thereof to purchase land and erect thereon such buildings as he or she shall deem necessary or to assist in financing the construction of any building erected by the state of Missouri or any of its agencies wherein available space will be provided for the division under lease or contract between the department of labor and industrial relations and the state of Missouri or such other agency. The director of the department of labor and industrial relations may transfer from the unemployment compensation administration fund to the special employment security fund amounts not exceeding funds specifically available to the department of labor and industrial relations for that purpose, equivalent to the fair reasonable rental value of any land and buildings acquired for its use until such time as the full amount of the purchase price of such land and buildings and such cost of repair and maintenance thereof as was expended from the special employment security fund has been returned to such fund.

3. The director of the department of labor and industrial relations may also transfer from the unemployment compensation administration fund to the special employment security fund amounts not exceeding funds specifically available to the department of labor and industrial relations for that purpose, equivalent to the fair reasonable rental value of space used by the department of labor and industrial relations in any building erected by the state of Missouri or any of its agencies until such time as the department of labor and industrial relations' proportionate amount of the purchase price of such building and the department of labor and industrial relations' proportionate amount of such costs of repair and maintenance thereof as was expended from the special employment security fund has been returned to such fund.

288.330. 1. Benefits shall be deemed to be due and payable only to the extent that moneys are available to the credit of the unemployment compensation fund and neither the state nor the division shall be liable for any amount in excess of such sums. [Neither the state of Missouri, nor any person or agency acting for it, may under any circumstance, by issuing bonds or otherwise borrow money from any source whatsoever to pay benefits hereunder, except as provided in 42 U.S.C.A. Section 1321.] The governor is authorized to apply for an advance to the

state unemployment fund and to accept the responsibility for the repayment of such advance in accordance with the conditions specified in Title XII of the Social Security Act, as amended, in order to secure to this state and its citizens the advantages available under the provisions of such title.

2. (1) The purpose of this subsection is to provide a method of financing the replenishment of the state's unemployment compensation fund as an alternative to borrowing or obtaining advances from the federal unemployment trust fund or for refinancing those loans or advances, and to provide a method through which the state may continue its unemployment compensation program at the least possible cost to the state and its employers.

(2) For the purposes of this subsection, "bond" means any type of obligation issued pursuant to this section, including any bond, note, or bond anticipation note or similar instrument.

(3) For the purposes of implementing the provisions of this subsection, there is hereby created the "Missouri Commission on Employment Security Financing". The membership of the commission shall be comprised of the governor, attorney general, and lieutenant governor. The governor is chairman and the lieutenant governor, secretary. The speaker of the house of representatives, the president pro tempore of the senate, the director of the department of labor and industrial relations, the director of the division of employment security, and the state treasurer shall serve as ex officio members of the commission but shall not have the power to vote. The commission shall constitute a body corporate and politic. The commission shall have all powers necessary to effectuate its purposes, including without limitation to provide a seal, keep a record of its proceedings, and elect a chairman from amongst its members.

(4) The commission is authorized to issue, sell, and deliver bonds, which shall mature no later than ten years after issuance, in the name of the commission in an amount determined by the commission, not to exceed a total of one hundred million dollars of indebtedness, that results in reducing or avoiding the need to borrow or obtain an advance pursuant to 42 U.S.C., Section 1321, or any similar federal legislation, or in an amount necessary to refinance any borrowing or advance previously made by the state for those purposes. The commission shall make an affirmative finding that the issuance of bonds for the purposes established in this section results in a savings to the state and its employers.

(5) The commission shall provide for the payment of the principal of the bonds, any redemption premiums, the interest on the bonds, and the costs attributable to the bonds being issued or outstanding as provided in this subsection and in section

288.310.

(6) As revenue, the commission may irrevocably pledge money received from the contributions received pursuant to section 288.128 for the payment of bonds and deposited in an account created for such purpose in the special employment security fund, or other money legally available to it, provided that the general assembly has first appropriated such contributions or other moneys deposited in such account for the payment of bonds.

(7) Bonds issued pursuant to this section shall not constitute debts of this state or of any agency, political corporation, or political subdivision of this state, and are not a pledge of the faith and credit of this state or of any of those governmental entities. The bonds are payable only from revenue provided for the payment pursuant to this section. The bonds shall contain a statement to the effect that:

(a) Neither the state nor any agency, political corporation, or political subdivision of the state is obligated to pay the principal or interest on the bonds except as provided by this section; and

(b) Neither the full faith and credit nor the taxing power of the state nor any agency, political corporation, or political subdivision of the state is pledged to the payment of the principal, premium, if any, or interest on the bonds except as provided by this section.

(8) The state pledges and agrees with the owners of any bonds issued pursuant to this section that the state will not limit or alter the rights vested in the commission to fulfill the terms of any agreements made with the owners, or in any way impair the rights and remedies of the owners until the bonds are fully discharged.

(9) In the documents authorizing the issuance of bonds, including refunding bonds, the commission may provide for the flow of funds and the establishment and maintenance of separate accounts within the special employment security fund, including the interest and sinking account, the reserve account, and other necessary accounts, and may make additional covenants with respect to the bonds. The resolutions authorizing the issuance of bonds may also prohibit the further issuance of bonds or other obligations payable from appropriated moneys or may reserve the right to issue additional bonds to be payable from appropriated moneys on a parity with or subordinate to the lien and pledge in support of the bonds being issued, and may contain other provisions and covenants as determined by the commission.

(10) The commission may issue bonds to refund all or any part of the outstanding bonds issued pursuant to this section, including matured but unpaid interest.

(11) The bonds issued by the commission, any transaction relating to the bonds,

and profits made from the sale of the bonds are free from taxation by the state or by any municipality, count, special district, or other political subdivision of the state.

(12) As determined necessary by the commission, the proceeds of the bonds, less the cost of issuance, shall be placed in the state's unemployment compensation fund and may be used for the purposes for which that fund may otherwise be used. If those net proceeds are not placed immediately in the unemployment compensation fund, they shall be held in the special employment security fund in an account designated for that purpose until they are transferred to the unemployment compensation fund.

(13) The commission may enter into any contract or agreement deemed necessary or desirable to effectuate cost effective financing hereunder. Such agreements may include credit enhancement, credit support, or interest rate agreements. Any fees or costs associated with such agreements shall be deemed "administrative expenses" for the purposes of calculating assessments relating to payment of the principal, interest, and administrative expenses related to bonds pursuant to the provisions of section 288.128.

(14) To the extent of any conflict between this section and other laws, the provisions of this section prevail.

(15) If the United States Secretary of Labor holds that a provision of this subsection does not conform with a federal statute or would result in the loss to the state of any federal funds otherwise available to it, the commission may administer this subsection to conform with the federal statute until the general assembly meets in its next regular session and has an opportunity to amend this subsection.

3. In event of the suspension of this law, any unobligated funds in the unemployment compensation fund, and returned by the United States Treasurer because such Federal Social Security Act is inoperative, shall be held in custody by the treasurer and under supervision of the division until the legislature shall provide for the disposition thereof. In event no disposition is made by the legislature at the next regular meeting subsequent to suspension of said law, then all unobligated funds shall be returned ratably to those who contributed thereto.

288.385. 1. Except as otherwise specifically provided by law, it shall be unlawful for the director of the division of employment security, any officer, employee, agent or deputy or former director, officer, employee, agent or deputy of the division of employment security, any person engaged or retained by the division of employment security on an independent contract basis, any person to whom authorized or unauthorized disclosure is made by the division of employment security, or any person who lawfully or unlawfully inspects any report or return filed with the division of employment security or to whom a copy, an abstract or a portion of any report or return is furnished by the division of employment security to make known

in any manner, to permit the inspection or use of or to divulge to anyone any information relative to any such report or return, any information obtained by an investigation conducted by the department in the discharge of official duty, or any information received by the director in cooperation with the United States or other states in the enforcement of the employment laws of this state. Such confidential information is limited to information received by the division in connection with the administration of the employment security laws of this state.

2. Nothing in this section shall be construed to prohibit the disclosure of information, returns, reports, or facts shown thereby, as described in subsection 1 of this section, by any officer, clerk or other employee of the division of employment security charged with the custody of such information:

(1) To an employee or the employee's duly authorized representative under regulations which the director of the division of employment security may prescribe;

(2) In any action or proceeding, civil, criminal or mixed, brought to enforce the employment security laws of this state.

3. Any person violating any provision of subsection 1 or 2 of this section shall, upon conviction, be guilty of a class D felony.

288.395. Any person receiving benefits by perpetrating a fraud or misrepresentation pursuant to this chapter for which a penalty has not herein been specifically provided, shall be guilty of a class A misdemeanor and, in addition, shall be liable to this state for a civil penalty not to exceed ten thousand dollars or double the value of the fraud, whichever is greater. Any person who has previously pled guilty to or has been found guilty of perpetrating a fraud or misrepresentation pursuant to this chapter and who subsequently violated any such provisions shall be guilty of a class D felony.

Section B. Because immediate action is necessary to reduce costs related to providing continued funding for the unemployment compensation program of the state, section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace, and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section A of this act shall be in full force and effect upon its passage and approval.